

Statutory Background

49 U.S.C. 40103 (e), Sovereignty and Use of Airspace

49 U.S.C. 47107 (a), Project Sponsorship

49 U.S.C. 47152, Terms of Conveyances

Section 308(a) Federal Aviation Act of 1958

Exclusive Rights

A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right for an on-airport aeronautical activity.

Exclusive Rights

Can be conferred by express agreement, imposition of unreasonable standards or requirements, or by other means.

Exclusive Rights

Limits the usefulness of the airport and the federal investment due to restrictions of a local monopoly on aeronautical activities.

Proprietary Exclusive Right

Airport sponsor may provide any or all aeronautical services.

Proprietary Exclusive Right

Statutory prohibition does not apply to the airport sponsor as long as it uses its own employees to provide the service.

Proprietary Exclusive Right

Airport sponsor may not grant an agent the right to exercise its proprietary exclusive right.

Exclusive Rights Prohibition

- Single FBO on an airport does not necessarily mean an exclusive rights violation if both of these apply:
- (1) Unreasonably, costly, burdensome, or impractical for more than one FBO; <u>and</u>
- (2) Bring on a second FBO would require a reduction in premises of the first FBO

Exclusive Rights Prohibition

Airport sponsors encouraged to develop minimum standards for the orderly development and provision of aeronautical services.

May occur if the airport sponsor unreasonably excluded a qualified applicant the opportunity to be an aeronautical service provider.

Can occur through leases where one aeronautical service provider is leased more land that can be put into productive use, thereby denying others.

The use of options or rights-of-first refusal are highly discouraged as it may be construed as the granting of an exclusive right.

An airport sponsor may exclude an incumbent FBO from a competitive solicitation in order to bring a second FBO on the airport.

Airport sponsor may restrict an on-airport aeronautical activity based on safety and efficiency as long as it is supported by an FAA finding.

